



Questions & Answers on Southern Resident Killer Whale ESA Status December 2004

Q. I thought NOAA Fisheries already made a determination on the status of Southern Resident killer whales under the Endangered Species Act.

A. We did. In July 2002 NOAA Fisheries announced its determination that listing North Pacific Southern Resident killer whales (*Orcinus orca*) as threatened or endangered under the Endangered Species Act (ESA) was not warranted because Southern Resident killer whales did not constitute a species, subspecies or distinct population segment as defined by the ESA. To find that Southern Residents are a “distinct population segment,” we must conclude they are both “separate” from other killer whale populations and “significant” to their species or subspecies. Scientists have considered killer whales worldwide as belonging to a single species. Although many scientists believe there may be more than one species, there is no agreement in the scientific community as to what those would be. No subspecies have been recognized by the scientific community. Given the uncertainty, NOAA Fisheries considered the significance of the Southern Residents with respect to all killer whales worldwide. The agency also announced its intention to reconsider the classification of killer whales within four years, or as new information became available, in recognition of the uncertainties regarding the taxonomic status of killer whales worldwide.

Q. Was NOAA Fisheries' ESA “not warranted” finding overturned?

A. No. NOAA Fisheries not warranted finding was challenged in court. The judge issued an order on Dec. 17, 2003, which set aside NOAA Fisheries' not warranted finding and remanded the matter back to NOAA Fisheries for re-determination of whether the Southern Resident killer whales should be listed under the ESA. The court found that it was unreasonable for NOAA Fisheries to rely upon the view that there is only one world-wide killer whale species, when NOAA's scientists said that view was outdated. In light of the court's order, NOAA Fisheries compressed the schedule it had previously announced for reconsidering the status of the Southern Residents.

Q. What did NOAA do to make a new determination?

A. NOAA Fisheries reconvened a biological review team and requested information to assist with an update of the status review. In addition, NOAA Fisheries cosponsored a cetacean taxonomy workshop in 2004, which included a special session on killer whales. The biological review team considered new information available, including cetacean taxonomy workshop papers and reports, and other available published and unpublished information. New information helped the biological review team evaluate whether Southern Residents are a distinct population segment under the ESA.

Q. What is the definition of “species” and distinct population segment under the ESA?

A. The ESA defines a species to include “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” The U.S. Fish and Wildlife Service and NOAA Fisheries adopted a policy to clarify their interpretation of a distinct population segment in 1996. The joint policy specifies key elements that must be considered when making a determination, including:

- the *discreteness* of the population segment in relation to the remainder of the species or subspecies to which it belongs, and
- the *significance* of the population segment to the species or subspecies to which it belongs.

Correctly identifying the killer whale species or subspecies is important because we evaluate a population’s “significance” relative to the species or subspecies to which it belongs.

Q. Are Southern Resident killer whales a species or distinct population segment?

A. In the decision issued today, NOAA has proposed its finding that the Southern Residents are a distinct population segment. That proposal is based on the following conclusions by the biological review team:

- There is not enough information to identify more than one world-wide species of killer whale.
- There is sufficient information to conclude that if there are not multiple species there are at least different subspecies.
- There is sufficient information to conclude that North Pacific Resident Killer Whales are likely a subspecies.
- Southern Resident Killer Whales are separate from other North Pacific Residents and are significant to North Pacific Residents.

These findings are now open for public review and comment. NOAA Fisheries will make a final determination within one year.

Q. Are Southern Residents at risk of extinction?

A. Yes. The proposal to list Southern Residents as threatened is based on concerns regarding the population decline from 1996-2001, the limited number of reproductive age males, and the presence of females of reproductive age that are not having calves. We are also concerned that the factors causing the decline of Southern Residents are not well known and are likely to continue until we learn more about what needs to be done to reverse this trend. We believe some of the causes of decline are: reduced quantity and quality of prey; persistent pollutants that could cause immune or reproductive system dysfunction; oil spills; and noise and disturbance from vessels.

Q. What happens next with the ESA status of Southern Resident killer whales?

A. The proposed listing determination is published in the *Federal Register* along with notice of public meetings and a 90-day public comment period. The following public meetings have been scheduled:

- Thursday, Feb. 17, 2005, 1:30-4:30 p.m. and 6:30-9:30 p.m. at the Seattle Aquarium
- Monday, Feb. 28, 2005, 1:30-4:30 p.m. and 6:30-9:30 p.m. at the Friday Harbor Laboratory, San Juan Island

NOAA Fisheries will evaluate all comments received, conduct a peer review, and then publish a final listing decision within a year of the proposed determination.

Q. Does this ESA proposal affect the ongoing efforts to develop a conservation plan for Southern Resident killer whales under the Marine Mammal Protection Act (MMPA)?

A. No. NOAA Fisheries will continue developing a conservation plan for Southern Residents while preparing a final ESA determination. A conservation plan under the MMPA is patterned after recovery plans under the ESA, so ongoing efforts in conservation planning will be directly applied to the recovery planning process, if there is a change in the ESA status of Southern Residents.

Q. Does the ESA provide protection to listed marine mammals beyond those already provided under the MMPA?

A. The MMPA and ESA both have provisions that prohibit “take” of animals in the population. The definitions of “take” for MMPA and ESA are similar. The ESA, however, requires NOAA Fisheries to identify “critical habitat.” Under Section 7, any federal agency must consult with NOAA Fisheries on any action that may adversely affect a threatened species or its critical habitat. Consultations occur with federal action agencies under ESA Section 7 to avoid, minimize or mitigate impacts of their activities on listed species. NOAA Fisheries also reviews non-federal activities that may affect species listed under the ESA, and issues permits under Section 10 for incidental take of those species and for scientific research and enhancement purposes.

If Southern Residents are listed, the Northwest Region anticipates an increase in the workload for ESA Section 7 consultations. For many projects, consultations are already underway and killer whale prey and habitat concerns are already being addressed for listed salmon. There may be additional issues to address during ongoing consultations for some projects, and new consultations specific to killer whales. Additional staff and resources will be needed for increased interagency coordination under Section 7.